

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11454 of 1993

*For Approval and Signature :***HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to civil judge ?

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PRITHVISINH VERUBHA ZALA - Petitioner(s)*Versus***STATE OF GUJARAT & 2 - Respondent(s)**

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Appearance :

MR HM JADEJA for Petitioner(s) : 1,

MISS MINI NAIR AGP for Respondent(s) : 1 - 2.

None for Respondent(s) : 3,

RULE SERVED BY DS for Respondent(s) : 3.2.1, 3.2.3, 3.2.4, 3.2.5

DELETED for Respondent(s) : 3.2.2

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT
22nd August, 2007*ORAL JUDGMENT*

The petitioner before this Court is the holder
of lands within the meaning of the Gujarat

Agricultural Lands Ceiling Act, 1960 [hereinafter referred to as, "***the Act***"]. The petitioner challenges the judgment and order dated 20th July, 1993 passed by the Gujarat Revenue Tribunal [hereinafter referred to as, "***the Tribunal***"] in Revision Application No. TEN.B.A.596 of 1991.

It is not disputed that the petitioner held agricultural lands at village Adval of Dhandhuka Taluka, District-Ahmedabad and at village Untadi of Limbdi Taluka, District-Surendranagar admeasuring 120 Acres 22 Gunthas in aggregate. It is also not disputed that the ceiling area prescribed under the Act was 54 Acres. Out of the said 120 Acres of land, the petitioner had transferred 3 Acres-15 Gunthas of land Survey No. 402 of village Untadi prior to 24th January, 1971. Thus, on 24th January, 1971, he held land admeasuring 117 Acres 7 Gunthas in aggregate. It transpires that since 24th January, 1971, the petitioner had transferred several parcels of land to various purchasers and some also to his minor children by way of family arrangement.

The Mamlatdar & ALT, Dhandhuka in Ceiling Case No. 9 of 1989 did not recognize the above referred

transfers made between 24th January, 1971 and the specified date i.e., 1st April, 1976. The petitioner's holding on the specified date was, therefore, held to be 117 Acres 7 Gunthas, out of which 33 Acres 7 Gunthas were held to be "*surplus land*". The said order of the Mamlatdar & ALT made on 27th July, 1990 was challenged by the petitioner before the Deputy Collector, Ahmedabad in Ceiling Appeal No. 9 of 1991. The said Appeal came to be dismissed on 8th March, 1991. The order of the Deputy Collector was confirmed by the Tribunal in Revision Application No. TEN.B.A. 596 of 1991 by the *impugned* judgment and order dated 20th July, 1993. Therefore, the present petition.

Mr. Jadeja has submitted that the order of Mamlatdar & ALT was at first made on 14th July, 1977. The said order was set aside by the Deputy Collector in *suo motu* revision. The matter was remanded to the Mamlatdar & ALT for inquiry *afresh*. After the said order of remand, a fresh inquiry was made by the Mamlatdar & ALT in Ceiling Case No. 89. The order made on 31st March, 1987 was confirmed in Appeal by the Deputy Collector, Ahmedabad. The said order was, however, *set-aside* by the Tribunal by its judgment

and order dated 10th February, 1989 passed in Revision Application No. TEN.B.A.497 of 1987. The Tribunal remanded the matter to the Mamlatdar & ALT to decide it *afresh* after publishing general notice under sub-section [1] of Section 20 of the Act and after giving individual notices to the surplus holders under sub-section [2] of Section 20 of the Act. Since the said order of remand, the Mamlatdar & ALT by his order dated 27th July, 1998 made in Ceiling Case No. 9 of 1989 held that the petitioner's holding was in excess of the ceiling area. That order has been confirmed by the Deputy Collector and the Tribunal, as stated hereinabove. In the submission of Mr. Jadeja, sub-section [2] of Section 20 of the Act envisages individual notice to each holder of the land. The Tribunal also had by its above referred Order dated 10th February, 1989 directed the Mamlatdar & ALT to issue notices as envisaged by section 20 [1] & 20 [2] of the Act. *Nevertheless*, the *impugned* order came to be made without issuing such notices. The order of the Mamlatdar & ALT, therefore, was made in contravention of the statutory provision, was illegal and unsustainable. The Tribunal below has erred in

confirming the said order. In support of his submission, he has relied upon the judgment of this Court in the matter of **Kashiben W/o. Ambalal Chhotalal Patel & Ors. vs. State of Gujarat & Anr.** [XII GLR p-540].

Section 6 of the Act provides, *inter alia*, that with effect from the appointed day no person shall, subject to the provisions of sub-section [2], [3], [3A] and [3B], be entitled to hold whether as owner or tenant or partly as owner and partly as tenant land in excess of the ceiling area. The words "*appointed day*" are defined in Clause (4) of Section 2 of the Act to mean, "***the day on which this Act comes into force***". Section 7 of the Act, *inter alia*, imposes a bar on transfer of the land after the appointed day. Section 8 of the Act provides, *inter alia*, that any transfer or partition of lands made after 24th January, 1971 but before the specified date [*i.e. 1st April, 1976*] be deemed to have been made in anticipation in order to defeat the object of the Amending Act of 1972. Sub-section [2] thereof empowers the Collector to declare that such transfer or partition was not made in anticipation in order to

defeat the object of the Amending Act of 1972. Section 13 of the Act provides for preparation of list of persons holding surplus land. Section 15 of the Act provides for computation of "*surplus land*". Sub-section [1] of Section 20 of the Act provides for publication of such list together with a public notice in the prescribed form calling upon all persons affected to submit to the Tribunal their objections or suggestions. Sub-section [2] thereof provides for individual notice in the prescribed form on each holder of the surplus land included in the list [*prepared under Section 13 of the Act*]. It is this notice envisaged by Section 20 [2] of the Act to an individual which, in the submission of Mr. Jadeja, is mandatory and in the present case such notice has not been issued to all individual holders namely the transferees of the petitioner. In the matter of Kashiben [*Supra*], the Division Bench of this Court has considered the provisions of the Act. It has been observed that, "***if individual members of a family are found to be the owners of the lands and holding such lands as such and are also found to be in actual possession thereof, for the purpose of sub-section***

[2] of Section 20, they would be the holders of the surplus lands included in the list contemplated by Section 13 of the Act."

In the present case, the facts mentioned above are not disputed. As recorded hereinabove, except transfer of land admeasuring 3 Acres 15 Gunthas, all transfers were made by the petitioner after 24th January, 1971. Unless the said transfers were declared by the Collector ***"not made in anticipation to defeat the object of the Amending Act of 1972"***, the same were not valid for the purpose of computation of total holding of the petitioner. As recorded by the Tribunal, the petitioner had made application to the Collector under sub-section [2] of Section 8 of the Act for such declaration. The said application, however, came to be rejected. Hence, for the purpose of the Act, such of the lands which were transferred after 24th January, 1971 would be included in the total holding of the petitioner. On specified date, the petitioner was the holder of such lands for the purpose of the Act. Sub-section [2] of Section 20 of the Act envisages individual notice to the holders of the land and not to the transferee/s. The

contention of Mr. Jadeja that the transferees of the petitioner were the holders of the land and were entitled to individual notice contemplated by sub-section [2] of Section 20 of the Act is not tenable. As the said transfers were deemed to have been made in anticipation in order to defeat the object of the Amending Act of 1972 [*as provided in Section 8 [1] of the Act*], for the purpose of the Act, the petitioner was the only holder of the lands.

In above view of the matter, in my opinion, the transferees of the petitioner were not the holders of the land and they were not entitled to notice contemplated by sub-section (2) of Section 20 of the Act. The Tribunal and the authorities below have rightly held that the total holding of the petitioner on the specified date [*i.e., 1st April, 1976*] was 117 Acres 7 Gunthas.

No other contention is raised before me. For the aforesaid reasons, the petition is *dismissed*. Rule is *discharged*. There shall be no order as to cost.

{Ms. R.M Doshit, J.}

Prakash*